

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

JENNIFER ANN MASH,	)	Case No.: 1:18 CV 23
	)	
Plaintiff	)	
	)	JUDGE SOLOMON OLIVER, JR.
v.	)	
	)	
COMMISSIONER OF SOCIAL	)	
SECURITY ADMINISTRATION,	)	
	)	
Defendant	)	<u>ORDER</u>

The Commissioner of Social Security Administration (“Commissioner”) denied disability benefits to Plaintiff Jennifer Ann Mash (“Plaintiff” or “Mash”), in the above-captioned case. Plaintiff sought judicial review of the Commissioner’s decision, and this court referred the case to Magistrate Judge Kathleen B. Burke (“Magistrate Judge” or “Judge Burke”) for preparation of a Report and Recommendation (“R & R”). Both parties submitted briefs on the merits. Plaintiff requested an order reversing the Commissioner’s decision on the basis that the Administrative Law Judge (“ALJ”) failed to properly weigh the opinion evidence presented by Plaintiff and inadequately considered Plaintiff’s testimony. In a letter filed with the court after she filed her reply brief, Mash also submitted that remand was appropriate in this case on the grounds that the ALJ was not constitutionally appointed at the time of the decision. The Commissioner sought final judgment upholding the decision below.

Judge Burke submitted her R & R (ECF No. 14) on October 29, 2018, concluding that the court should reverse and remand the Commissioner’s final decision. Specifically, the Magistrate

Judge agreed with Mash that the ALJ did not assess the required evidence in sufficient detail, and the explanation he gave for how he weighed the opinion of Mash's nurse was inadequate for Judge Burke to determine whether the ALJ's decision was supported by substantial evidence. (R & R at 1.) Since Judge Burke found that the case should be remanded on the merits, Judge Burke also recommended that the court deny Mash's challenge to the ALJ's appointment as moot.

The Magistrate Judge disagreed that the ALJ's explanation for considering Nurse O'Brien's opinions were inconsistent with the overall evidence. In particular, Judge Burke found that although the ALJ's decision noted that "there [was] no evidence of substantial change in circumstances" after July 2014, Mash's symptoms had changed between October 2014 and December 2014. While Mash complained of "some anxiety, anger, and panic attacks" in the time up to October 2014, in December 2014, Mash had reported fatigue, boredom, restlessness, and that she went four or five days at a time without leaving her home to Nurse O'Brien. (R & R at 21.) Judge Burke also found that the ALJ had not discussed in sufficient detail what Mash was able to do, or not do, despite her symptoms and treatment. With regard to Plaintiff's argument that the ALJ inadequately considered her testimony, Judge Burke determined that the ALJ could re-evaluate Plaintiff's testimony on remand. Finally, having found that the case should be reversed and remanded, Judge Burke recommended that the court deny Plaintiff's challenge to the ALJ's appointment as moot.

On November 8, 2018, the Acting Commissioner of Social Security Administration responded to the Magistrate Judge's R & R, indicating that she would not be filing objections to the R & R.

The court finds, after careful *de novo* review of the Magistrate Judge's R & R and all other relevant documents in the record, that the Magistrate Judge's conclusions are fully supported by the

record and controlling case law. Accordingly, the court adopts as its own Judge Burke's Report and Recommendation (ECF No. 14). The court hereby reverses and remands the Commissioner's decision for further proceedings consistent with this opinion.

IT IS SO ORDERED.

/s/ SOLOMON OLIVER, JR.  
UNITED STATES DISTRICT JUDGE

November 28, 2018